

DRAFT
4/9/14
BILL 10 (2014)
PROPOSED U/A

LAND COURT	REGULAR SYSTEM
AFTER RECORDATION, RETURN BY MAIL () PICKUP () TO:	

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTY TO DOCUMENT: VINE4, LLC

TAX MAP KEY NO. (1) 7-3-004: 027

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this _____ day of _____, 2014, by VINE4, LLC, a Hawaii limited liability company, whose address is 167-B S. Kamehameha Hwy., Wahiawa, Hawaii 96786 (hereinafter referred to as the "Declarant"),

[Form: 2/13]

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Wahiawa, Hawaii, consisting of approximately 2.32 acres, described as Tax Map Key No. 1-7-3-004:027, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to develop nineteen (19) single family homes on the Land (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from the R-7.5 Residential District to the R-5 Residential District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 10 (2014), was held by the Council on March 12, 2014; and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. _____ that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. Minimum Parking. The Declarant shall provide a minimum of two (2) on-site parking stalls for each dwelling unit in the Project.
2. Affordable Housing. If 10 or more dwelling units beyond the original 13 are to be constructed, prior to a building permit approval for the tenth additional unit, an agreement shall be executed with the DPP in accordance with adopted rules. The agreement shall provide that at least 30 percent of the additional units are to be within the affordable range.

3. Compliance with Other Governmental Requirements. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other government requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.
4. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. This status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied.
5. Noncompliance with Conditions. In the event of noncompliance with any of the conditions set forth herein, the Director of DPP shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to the Project. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT:

ORDER NO. : 6813015894-MW

The land referred to in this Report is situated in the State of Hawaii, and described as follows:

LOTS:

- 2-A, area 12,750.0 square feet, more or less,
- 2-C, area 12,750.0 square feet, more or less,
- 2-E, area 12,750.0 square feet, more or less,
- 2-G, area 12,750.0 square feet, more or less, and
- 3-G, area 12,750.0 square feet, more or less, as shown on Map 17;
- 2-B-1, area 7,500.0 square feet, more or less,
- 2-D-1, area 7,500.0 square feet, more or less,
- 2-F-1, area 7,500.0 square feet, more or less,
- 2-H-1, area 7,500.0 square feet, more or less, and
- 3-H-1, area 7,500.0 square feet, more or less, as shown on Map 45,

filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 12 of T. H. Gibson, W. B. Thomas and Byron O. Clark, Trustees.

WARRANTY DEED

Being the property described in and covered by Transfer Certificate of Title No. 1,055,070